

Spring 5-1-2024

Social Media and the Court: Exploring Impacts, Challenges, and Legal Considerations in the Digital Age

Jordan Gruce
Indiana State University

Follow this and additional works at: <https://scholars.indianastate.edu/honorsp>



Part of the [Social Influence and Political Communication Commons](#), and the [Social Media Commons](#)

Recommended Citation

Gruce, Jordan, "Social Media and the Court: Exploring Impacts, Challenges, and Legal Considerations in the Digital Age" (2024). *University Honors College*. 32.
<https://scholars.indianastate.edu/honorsp/32>

This Article is brought to you for free and open access by the Honors College at Sycamore Scholars. It has been accepted for inclusion in University Honors College by an authorized administrator of Sycamore Scholars. For more information, please contact dana.swinford@indstate.edu.

**Social Media and the Court: Exploring Impacts, Challenges, and Legal Considerations in
the Digital Age**

Jordan Gruce

Honors College, Indiana State University

GH 401: Independent Study

May 6, 2024

Abstract

Social media has become a greater concern to the judicial system as mistrials and overturned convictions continue to take place because of internet-related juror misconduct. This paper sought to understand the implications of social media on the criminal justice system through its use by jurors, judges, attorneys, and individuals outside of the courtroom. It was found that information regarding criminal cases presented online is often negative, biased, and sensationalized, and frequently contains prejudicial evidence that can undermine a defendant's right to a fair trial by an impartial jury. Jurors may commit misconduct by researching a case online or by communicating about a case online, both of which hinder their ability to serve as an unbiased party. Judges and attorneys are also at risk of improper personal use of social media, as well as face increased scrutiny online due to social media discourse. This paper also discusses options available to the court to mediate the effects of social media on the trial process and social media misconduct's greater impact on public perception regarding the integrity of the justice system.

Keywords: social media, jurors, trial outcomes, public perceptions, solutions

Social Media and the Court: Exploring Impacts, Challenges, and Legal Considerations in the Digital Age

In our globalized world, social media is one of the most important tools for communicating, spreading information, and entertaining. While social media consumption has become a prominent activity in our society, it has not always been a commonality. The social media era that we currently live in has only developed within the past two and a half decades, with the first social media site, Six Degrees, launching in 1997 (Ngak, 2011). The popularization of the first few social media sites, such as Friendster, MySpace, and Facebook, coincided with the rising use of laptops and personal computers in homes and schools (Ngak, 2011). As flip phones transformed into smart phones, social media sites became more accessible and transportable, and as a result, access to these applications has become rampant with most jurors, attorneys, judges, and other court personnel owning devices like cell phones, personal computers, and tablets (Janoski-Haelen, 2011). While some sites have faded from existence, Facebook remains at the top of the social media food chain, along with YouTube, Instagram, TikTok, Snapchat, and X. Today, there are more than 5 billion worldwide social media users, a number that represents more than 60% of the global population (Datareportal, 2024).

In the digital age of the twenty-first century, a singular post on social media can reach millions of people across the world instantaneously. This has resulted not only in increased connectivity between social media users, but also increased access to information (Chancellor, 2019). Whether it is about the best beauty products, the most recent news in the sports industry, the current state of politics, or even medical qualms, information related to any question someone may have can be found online. As such, these platforms have served as a way to influence a wide array of individuals to purchase products, to support (or denounce) high-profile

people, to form opinions on pop-culture and current events, and much more. In fact, research conducted in 2021 indicates that over 60% of Americans rely on social media as their main source of news (Hutchinson, 2021).

Despite the prevalent use of these platforms, not all information presented on social media is created equally. Most social media sites permit the creation of accounts without the verification of personal information, even allowing users to have anonymous profiles. Any individual can create whatever content they would like to, with few restrictions. As a result, many posts on social media do not come from reputable sources and tend to rely on opinions and personal experiences, rather than facts (Garfield Tenzer, 2019). This biased information is spread through “shares,” “reposts,” and “likes,” creating a digital environment where the most popularized posts are shown to the most people. The social media user’s experience is further skewed by algorithm-curated feeds, which seek to present posts that the user will identify with, agree with, and interact with (Bozdag, 2013). While you may recall rolling your eyes at your parents telling you, “Don’t believe everything you read on the Internet,” it is an important piece of advice to follow when intaking any form of social media content, where digital videos and images can be easily manipulated, and information easily fabricated.

While most instances of misconstrued information on social media is relatively harmless, one area in which it may have greater implications is the judicial system. The United States has had a longstanding tradition of trials being presumptively open to the public and the media. This was established under the assumption that the public would oversee the administration of justice and hold courts accountable for the fair treatment of citizens and the application of the law (Ligon, 2023). Preceding the 1920s, to view real-time court coverage of criminal cases, observers were required to physically attend the event. In 1925, though, *Tennessee v. John*

Thomas Scopes became the first radio-broadcasted trial. Thirty years later, in 1955, a television station in Waco, Texas, aired the first televised trial on KWTX-TV. Trial viewership continued to increase with the growing popularity of televisions, as exemplified by the more than 150 million people who tuned in to watch the verdict of OJ Simpson's criminal trial (Ligon, 2023). With the Florida Supreme Court ruling on *Chandler v. Florida* (1981), allowing the broadcast and still photography coverage of criminal trials, the pathway for court coverage on social media was paved. As video services advanced, social media "influencers" recognized the opportunity to turn sensationalized video reels into profits by capitalizing on the coverage of particularly prominent cases. However, while the idea of open trials was intended to ensure transparency and accountability for the criminal justice system, much of the public today consumes short, curated content on social media which is intended to generate profits rather than provide fulsome information (Ligon, 2023). With the growing use of social media regarding the coverage of criminal trials, it is important to ask what this publicization could mean for the individuals involved.

The rising influence of social media in shaping public opinion expands to the judicial system when clips from live feeds of trial court and discussion of current criminal cases are shared online. This social media discourse has the potential to mar the accused's right to due process. When a defendant faces criminal charges before the court, they possess a set of inalienable rights as ordered by the U.S. Constitution's Sixth Amendment. The six provisions listed in the Sixth Amendment are the right to a speedy and public trial, the right to an impartial jury trial in the same location as the crime, the right to be informed of the criminal charges against them, the right to confront their accusers in court, the right to present evidence and witnesses in court, and the right to legal representation (U.S. Const. amend. VI, 1791).

Of particular importance in returning a just verdict of guilty or innocent is an impartial jury. Impartial jurors, who are free from bias, prejudice, or preconceived notions that may influence their judgment and decision-making processes, are essential for guaranteeing a fair trial for all parties involved. They are more likely to weigh the evidence in a case objectively and render a verdict based solely on the facts presented in court and the applicable law. Courts have taken great care to establish legal protocols to ensure that initial jury selection is fair, including the opportunity for the prosecution and defense teams to select jurors from a panel, determine bias by asking potential jurors questions, and dismiss jurors on peremptory challenges or valid challenges upon proof they would not be able to make a fair decision (Stern, 2022). But, when information regarding a case makes its way onto social media prior to the court trial, it has the capacity to contaminate the potential jury pool. This contamination can have serious implications for the judicial system, as it may negate the impartiality that individuals are intended to have when serving on a jury. One large responsibility of jury members is to prescribe to the principle of presumption of innocence, which maintains that all defendants are presumed innocent until proven guilty beyond a reasonable doubt. If a juror intakes information about a case prior to the trial, they may develop preconceived notions about the defendant that inhibits them from viewing the facts of the matter objectively (Ligon, 2023).

The implications of social media use extend beyond the verdict. Public opinion regarding criminal trials that have involved intense media coverage has an impact on defendants beyond the punishments imposed by the court (Stern, 2022). Key courtroom figures are also at risk of ramifications due to media discourse. Judges, attorneys, and prosecutors have all been subjected to criticism for their personal use of social media (Booth-Perry, 2014). Additionally, criticism surrounding prosecutorial decisions, trial strategies, and the outcome of a case falls on these

individuals, and controversy about their conduct may put both their personal safety and professional security at risk (Goodrum, 2015; Rigertas, 2014).

Social media has not always been a concern to the court. But, due to the relatively recent development of case interest on online platforms, it has become a growing issue. Understanding the implications of social media coverage related to active criminal cases is gravely important in operating a legal system that is just and fair. This paper will explore the effects of social media exposure on the trial process, outcomes, and impacts on court actors. This includes investigating the accuracy of case information found on social media and understanding the extent of juror use of social media. The capacity of highly publicized cases to influence the dynamics of due process, such as the influence of juror pre-exposure to case information, as well as prosecution and defense strategies that may counter this are analyzed. Additional social media usage by key figures in the courtroom and the potential for post-verdict controversy covered online to adversely impact court actors will also be discussed.

Court Coverage on Social Media

To understand the implications of social media coverage on the outcomes of criminal cases, it is important to establish the contents of the coverage. As traditional news outlets compete with one another for revenue, they tend to endorse news as a form of entertainment with the most sensational stories receiving the most attention. This results in highly skewed, one-sided coverage of cases that traditionally rely on law enforcement and prosecution sources as the basis of reports. Most news outlets, in an effort to keep up with the popularity and accessibility of social media, have begun to present their stories on social media platforms (Bakhshay & Haney, 2018). In addition to traditional news organizations, “citizen journalists” have found success on social media. While in an attempt to protect the right to a fair trial and the due administration of

justice by applying the law of sub judice contempt to prevent prejudicial publicity, courts fail to control the discussion of ongoing criminal cases by the general public. Social media applications enable many people to publish material about court cases online, though they are generally unaware of the legal restrictions that accompany this kind of information. Lacking any professional training in journalism, citizen journalists are uneducated about the law of sub judice contempt, defamation, and other rules limiting freedom of speech. In addition, they fail to have their work verified by professionals who understand these legal constraints (Keyzer et al., 2013). Basic social media profiles are kept to a no sub judice standard, meaning that they are allowed to post information that traditional news networks are restricted from sharing. Citizen journalists can make a post regarding a court case without having to verify or corroborate any of the details they review (Stern, 2022). They tend to discuss highly publicized, interesting stories in order to drive their engagement numbers to maximize profits. As a result, they present one-sided content that performs well with their viewers and becomes the marketable bias. This then becomes the dominating content that monopolizes social media platforms, driving the consumption of this biased information (Ligon, 2023).

Bias is exacerbated not only by what is posted by citizen journalists, but by algorithmic filtering and personalization on social media platforms. With technological advances continuing to evolve, social media websites have begun to rely on algorithms to maximize user engagement. Algorithms work by collecting data on the user's browsing behaviors to predict what content they prefer and rank posts according to these preferences. Highly ranked posts – those that are predicted to best align with the user's personal interests and beliefs – are filtered to be shown to the individual the most. This design is intended to present users with the content and opinions they care the most about, increasing profits for the media source by keeping them on the

platform for as long as possible (Hatem, 2023). The raw data collected by personalization systems can include the demographic information of the user, their IP address, cookies, and session ids, and their usage mining such as clickthrough's, browsing history, previous queries, and time spent on particular posts. A large component of personalization algorithms is location, with the filters favoring local content, as it is assumed that this information will be more relevant to the user. The system processes this data to determine how a user values certain content and predict what they will be interested in next (Bozdag, 2013). When an individual is repeatedly shown posts that align with their personal views, and opposing views are withheld from their feed, these ideas and opinions are reinforced. The presentation of localized, customized content to social media users can have serious implications for the defendant who has the right to an impartial jury in the same location where the crime was committed.

Studies on media content of capital cases have indicated that coverage of crime is overwhelmingly skewed and one-sided. When pretrial publicity on 20 capital cases was analyzed for content, it was revealed that 75% contained some form of negative publicity, with the most being sensationalism, followed by negative character statements. Additionally, 20% included circumstantial or physical evidence of the defendant's guilt. Despite this prejudicial information having the potential to be legally inadmissible at trial, it is freely available to the public prior to jury selection. On the contrary, only 19% of coverage contained any positive publicity, most frequently being positive character statements (Bakhshay & Haney, 2018). Negative publicity has multiple impacts on wrongful convictions. With the intent being to provide entertainment through public interest stories, media narratives strive to create a connection between crime and public emotionality. Chancellor (2019) outlines three main constructions within media content that negatively affect an accused individual. First, by victims of crime being portrayed in a

sympathetic light, news outlets present easily identifiable good and bad sides of the story. Next, they attempt to build audience fear by reporting early details of a crime and speculating on a motive. They connect readers to the victim through excessive reporting of their victimization and constructing fear of potential victimization on behalf of the consumer. Finally, extensive negative publicity builds a foundation for public moral outrage directed towards the suspected or accused person. These factors tend to put pressure on the criminal justice system and may result in rushed investigations and heightened tunnel vision by detectives, prosecutors, and jurors. Subsequently, emphasized coverage on a suspected individual may lead to their wrongful conviction (Chancellor, 2019).

Extent of Juror Use of Social Media

It is evident by the findings above that pretrial coverage of criminal cases on social media is consistently biased against the accused. But in order to understand the implications of this information on the execution of due process, the use of social media by potential and serving jurors must be analyzed. In a small research project conducted with judges, magistrates, and court workers, these officials indicated that juror misuse of social and digital media leading to halted court proceedings was their most significant concern (Keyzer et al., 2013). Jurors may use social media for a variety of reasons, including to relieve boredom, to increase their confidence that they are delivering the appropriate verdict, and simply as a matter of instinct. There are four ways that jurors can inappropriately use social media. The first is by learning case-related information from a source outside of the court. Next is by publishing information about the trial. Similarly, discussing the merits of the case or seeking opinions from others is considered misconduct. Finally, a juror using social media to contact parties, witnesses, lawyers, or the judge involved in the trial constitutes inappropriate use (Bartels & Lee, 2013).

Researching a case online may be considered the most concerning form of social media misconduct by jurors. During jury instructions by the court, members are explicitly instructed not to conduct external research, to only consider the facts that are presented in court, and to keep an open mind until the jury enters the deliberation process (Zora, 2012). However, research indicates that many jurors do not abide to these instructions. In a study conducted with jurors post-verdict in the United States asking them to anonymously report if they had conducted research on social media during their trial, 12% indicated they had (Chancellor, 2019). Even more concerning, in the same study another 26% of jurors discovered case information on the internet without explicitly searching for it. Jurors have been known to look up unfamiliar legal terms and confirm information presented in the case online. Due to the fact that evidence presented in court is highly screen and restricted, relevant information may be excluded from the case. As a result, the frustrated juror may conduct their own research to ensure they have the full story. Additionally, they may see nothing wrong a quick internet search contrary to instruction, and instead feel helpful by digging deeper into the case. Further, jurors may turn to social media research merely because of the convenience and ease of accessing more information (Zora, 2012). In court case *Wilgus v. F/V Sirius*, one juror sent Facebook friend requests that were accepted by the plaintiff. Subsequently, the juror had access to their personal page, allowing them to see posts advocating for the use of mushrooms, marijuana, and alcohol. Concerned, the juror reached out to the plaintiff's attorney inquiring about their knowledge of the posts. Although this misconduct took place following the conclusion of the case and did not impact the trial, it provides one example of juror misuse of social media for external research (Janoski-Haehlen, 2011).

Although juror research is particularly worrisome, juror communication on social media is also troubling. While lawyers understand the rules of professional conduct that restrict them from communicating about a case outside of the courtroom, jurors are not held to the same standard. In fact, there is no standard for monitoring or punishing jurors who post case information online (Janoski-Haehlen, 2011). Jurors may choose to post status updates about their service as a way of increasing their sense of empowerment and prestige due to their control over case outcomes. With social media being integrated into many people's daily lives, jurors may see no issue with updating their followers about the ongoings of the case they are involved in. Similarly, due to the addictive nature of social media communication, jurors may ignore the instruction not to communicate about a case to fulfill their strong desire to share their daily activities with their friends and followers (Zora, 2012). Constant social media use has become the new norm, and many people find it difficult to live without communicating with friends and family for extended periods of time. Their need for self-realization is satisfied, their loneliness is decreased, and their fear of missing out is combated through e-communication (Braun, 2013). By posting case information online, however, jurors open the door to responses from third parties, and some jurors have even used social media to seek out friends' and families' opinions. Again, jurors may view social media communication as a way to increase their knowledge about the case and provide a more well-rounded judgment, but in doing so they strip a defendant from his constitutional rights. Online posts by jurors can also indicate opinions that represent a prejudgment of the defendant. Likewise, jurors may communicate with other jurors via social media, participating in premature deliberations which is not permitted by jury instructions (Zora, 2012).

Implications for the Criminal Justice System

Having established the content of social media discourse and extent of juror use of social media, we may begin to analyze the implications for the criminal justice system. Embedded within the criminally accused's right to a fair trial is the right to an impartial jury. The role of the jury is to assess evidence impartially and free from external influences (Bartels & Lee, 2013). However, the evolution of media and communication provides all users with instant access to information and constant connectivity to others. While the roles of jurors include only considering facts presented during trial, not discussing the trial with anyone until the verdict has been delivered, and refraining from communications with other jurors until all arguments have been made, social media habits complicate these responsibilities. Now, people are accustomed to satisfying their curiosities instantly with an internet search, sharing everything on social media, and posting thoughts in real time to receive immediate feedback (Hoffmeister & Watts, 2018).

There is a myriad of ways improper internet use by jurors can impact the outcomes of cases. First, by accessing extrajudicial information, jurors undermine the foundations of due process. During discovery, pretrial motions, motions in limine, and evidentiary rulings, judges and lawyers vet evidence to that which is relevant for the trial (Flake, 2013). But, by conducting external research, jurors have access to information about the judge, parties, witnesses, attorneys, and evidence that has not been approved by the court (Hoffmeister & Watts, 2018). As discussed previously, the external information published online may be not only inaccurate, but unfairly prejudicial. Internet research provides them with the ability to access the defendant's criminal and civil records, personal information about the defendant, and court-inadmissible information about the case. Because the defendant is unaware the juror has accessed this information, he is precluded from his constitutional right to confront the evidence that is brought against him (Zora,

2012). Additionally, while the voir dire process is designed to allow counsel to present their case according to how they believe jurors will react to evidence, lawyers are unable to control the accuracy of independently obtained information and do not have the opportunity to adapt their theories of the case accordingly. The court also cannot provide appropriate instruction to guide juror consideration of information that is accessed outside of the courtroom (Flake, 2013). Thus, a juror may base their decision on information viewed on social media, despite due process standards that are in place to ensure a fair trial for the defendant.

By viewing extrajudicial content, jurors put their impartiality at risk. It has been shown that pretrial publicity in general can create a prejudicial impact towards the criminally accused, with a greater quantity of exposure resulting in greater culpability, reduced credibility, more guilty verdicts, and harsher sentencing for the defendant (Bakhshay & Haney, 2018). In an analysis of 44 empirical tests representing 5,755 subjects, it was found that participants exposed to negative pretrial publicity were significantly more likely than those exposed to less or no negative pretrial publicity to judge a defendant as guilty (Stebly et al., 199). Additionally, it was revealed that in the communities where crimes have occurred, prejudgments of defendant culpability were greater for residents that recall greater amounts of pretrial publicity information than those who recall less. Further studies have indicated that potential jurors for highly publicized cases consistently have extremely negative attitudes towards the defendant. As such, courts today struggle with jury pools who have preexisting knowledge and predetermined opinions regarding the crime without either party having the opportunity to present their case (Stern, 2022). Due to the use of algorithms, social media users frequently see similar posts representing the same ideas and beliefs. The constant reinforcement of these concepts tends to fashion the perception that the public commonly holds those beliefs (Hatem, 2023).

Consequently, of great concern when jurors view high amounts of parallel pretrial publicity are the effects of groupthink. Groupthink is a phenomenon that takes place when individuals within a group of people make poor decisions as a result of the urge to conform to, or the belief that dissent from, the group is impossible. When jurors view content on social media that reinforces the perception of overwhelming public opinion regarding a case, they may not be able to withstand the pressures of groupthink. Accordingly, they may conform their votes to what they believe will satisfy the public (Ligon, 2023). So, while the role of jurors is to remain impartial until they have heard arguments from each party in completion, by conducting research online and being exposed to public opinion via social media jurors may develop preconceived notions regarding the case that inhibit their capacity to serve as an unbiased party.

Impartiality can also be impacted by jurors posting on social media themselves. As previously mentioned, when a juror takes to social media to share the ongoings of the case they are involved in, they increase the possibility that an external party will reach out to them (Hoffmeister & Watts, 2018). By interacting with a post via likes, comments, and direct messages, a third party can share their own thoughts and opinions regarding a criminal case. These extrajudicial opinions have the potential to influence the juror's decision-making process, making it difficult for them to remain impartial (Zora, 2012). Additionally, when a juror comments about a case online, they may demonstrate a prejudgment indicating they have made up their mind prior to viewing all of the evidence and inhibiting them from being able to fairly evaluate future evidentiary presentations by each party (Flake, 2013; Zora, 2012). By publicly stating these preconceptions, the likelihood of someone affiliated with the case learning of these views prior to the verdict is increased (Hoffmeister & Watts, 2018). This is problematic because a lawyer aware of a juror's views may attempt to influence or manipulate the juror, undermining

the impartiality of the trial and the integrity of the legal system. In all, outside of researching about a case, jurors posting about a case on social media may further damage the efforts of due process to ensure a fair trial.

When the presumption of an open trial was established, it was intended to promote transparency, public scrutiny, and judicial accountability. However, examples of extreme social media discourse damaging the sanctity of due process warrant a reevaluation of open trial presumptions. A striking instance of extensive media coverage influencing case outcomes is the *Depp v. Heard* defamation lawsuit that took place in the spring of 2022. The final week of this trial amassed 3.54 million viewers, with data indicating the majority of the public consumed only short, curated video clips about the court proceedings. Due to Johnny Depp's overwhelming support from fans, influencers seized the opportunity to profit off of the trial by creating content marketing to his supporters' biases. This culminated in pro-Depp content dominating social media users' feeds (Ligon, 2023). Amber Heard, on the other hand, faced an outpouring of online criticism. While the media cast Depp as a misunderstood victim, Heard was painted as a villain. Content creators published clips mocking Heard's testimony and scrutinizing her every move as though they were crime experts and body language analysts (Stern, 2022). The biased nature of incomplete clips posted on social media resulted in many viewers taking strong stances about how they believed the case should resolve (Ligon, 2023). This phenomenon is considered to be trial by social media, in which the public deems a defendant as guilty or not guilty and imposes their own form of social sanctions independent of the court. Similarly, in *State v. Anthony* (2011), Casey Anthony became one of the first defendants to be tried by social media. Charged with the first-degree murder of her two-year-old daughter, a mass amount of information about Anthony's case became accessible to the public prior to jury selection. As a result, the court of public

opinion easily formed an opinion about Anthony and what they believed the outcome of her case should be. There were nearly 100 posts per minute regarding instances of her laughing and smiling throughout the investigation and her lack of emotion during the trial (Stern, 2022). Despite being acquitted by the court, Anthony was subjected to social and economic punishments due to the public's guilty verdict. These instances showcase that the status of an open trial does not guarantee the public will intake fulsome, nonbiased information regarding the ongoing within the courtroom (Ligon, 2023). Thus, the presumption of open trials must be reevaluated to protect the rights of the accused.

Protecting the Execution of Due Process

One large implication of improper social media use by jurors is the reduction of efficiency for the court process. Internet misconduct that causes verdicts to be overturned, mistrials to be declared, new trials granted, and jurors to be dismissed results in a great loss of valuable court time and resources (Zora, 2012). The judicial system simply cannot afford to consistently re-try cases or declare mistrials following eight weeks of trial due to juror misconduct. In one Florida federal drug case, eight weeks after the commencement of the trial, a juror admitted to the judge they had been conducting online research. Shortly thereafter, the judge discovered that eight other jury members had been doing likewise, and a mistrial was forced to be declared. If instances like these continue to occur, not only will it cost the court and interested parties time and money, but also cause society to question the power and integrity of the judicial system (Janoski-Haehlen, 2011).

One effort that may be made to reduce the impact of social media on due process is limiting the coverage of active cases. It is recognized that in order for parties to receive a fair trial, an assessment of guilt or innocence must be made in a controlled courtroom by an impartial

jury. Sensationalistic press coverage can taint the potential jury pool, though, inhibiting their ability to be an impartial party. In the United Kingdom, the media is barred from reporting on pretrial hearings until a verdict has been reached. However, the United States' First Amendment guarantees the freedom of the press, generally including the right to report on pretrial hearings. Even though a judge may exclude the public from a pretrial hearing upon request from the prosecution or defense, the court can better preserve the integrity of the case by restricting the public's access to material and the media's presence during both the pretrial and trial phases. Instead of barring court coverage, implementing a system that delays the media's ability to cover a trial and obtain information about a case until after the verdict will guarantee that pervasive public opinion is kept out of courtrooms. Restricting the media's access to information both before and during the trial would help to prevent media sensationalism while maintaining freedom of the press to report. Additionally, postponing the release of information until after the trial will enable the parties to have a fair trial and provide the public with all the facts they need at once to form an informed view, rather than one based solely on speculation (Stern, 2022).

To ensure the fairness of trial, adjustments to the trial process must be made in an effort to mitigate the effects of social media coverage. One area that may be improved to align with digital advancements in society is the voir dire process. Voir dire is the juror selection process during which the prosecution and defense teams determine who will sit on the jury in their case. Until voir dire reveals otherwise, it is assumed that a juror is impartial, yet the integrity of a juror is crucial to this process. A juror who raises doubts about their impartiality but swears to abide by the court's directions to be fair may cause a judge to deny a challenge for cause. Jurors may choose not to reveal their prejudice because they want to remain on the panel and because they are reluctant to acknowledge their perceived shortcomings in public. Notably, the most biased

juror may be the least likely to disclose their prejudice as they desire to express their opinions in the courtroom. Moreover, jurors who harbor unconscious biases may honestly believe they are evaluating a case according to the evidence presented, even if they are not (Hatem, 2023). While technological advancements can be detrimental to the criminal justice system as discussed previously, digital platforms can be advantageous in voir dire. By researching the social media profiles of prospective jurors, court personnel can find an abundance of information about individuals including their political views, religion, hobbies, and criminal background. Having this knowledge also enables attorneys to verify statements made by potential jurors during voir dire (Hoffmeister & Watts, 2018; Flake, 2013). Algorithmic technology may also be utilized to discover a juror's unconscious biases or their predispositions on particular issues (Hatem, 2023). Further, if jurors recognize that their voir dire responses can be verified by their digital footprint, they will be motivated to be more truthful or request dismissal from the case (Hoffmeister, 2015).

A large focus of reform has also been placed on jury instruction. Jury instructions that specifically address internet activity are often more favorable than general instructions directing jurors not to discuss the trial or conduct outside research (Zora, 2012). Aaronson & Patterson (2012) outline four criteria to modernize jury instructions with current digital practices. These include using plain English and social media terminology, providing concrete examples of inappropriate behavior on social media, clarifying the reasoning behind social media restrictions, and outlining the repercussions of breaking social media restrictions. If juries are informed of the reasons prohibiting them from conducting online research or communicating about the trial on the Internet, jury instructions may have a greater chance of being successful (Zora, 2012). By empowering juries and providing detailed information as to why they should avoid social media

use, jurors are much more likely to abide by the rules set forth by the court (Braun, 2013). Courts are also encouraged to give instructions concerning the Internet several times during the trial, since jurors may forget them amidst the plethora of other juror instructions (Zora, 2012).

There are several other alterations to courtroom procedures that may be put forward to mitigate the effects of social media. Courts may consider banning communication devices in the courtroom to prevent jurors from using cell phones during the trial (Bartels & Lee, 2013), though this effort may not be effective as jurors can still access social media on their devices when they go home (Hoffmeister & Watts, 2018). Due to this, some judges may opt for jury sequestration, which would keep jurors separated from the rest of the public and their electronic devices for the duration of the trial, though this strategy is costly for the court and generally retained for limited high-profile cases. As an alternative, jurors may be subjected to e-sequestration. Virtual sequestration constitutes jurors being able to stay at home but consenting to having their use of certain electronic devices and the Internet either monitored or restricted. While this avenue is economically advantageous to traditional sequestration, by some it may be viewed as overly intrusive (Braun, 2013; Hoffmeister, 2015). Other options available to the court include requiring jurors to take an oath resolving to stay away from social media while serving and acknowledging the risks and punishments associated with breaking this oath, and having jurors send a message to their contacts declaring their position as a juror and associated responsibilities to reduce the likelihood of contacts reaching out to them about the case (Bartels & Lee, 2013). Change of venue continues to be the most logical solution for cases involving high media publicity (Stebly et al., 1999). However, change of venue is approved at the discretion of the judge overseeing the case and may be difficult to obtain due to the vague legal standards sanctioned for this action (Bakhshay & Haney, 2018). To be approved, the “totality of circumstances” surrounding the case

must demonstrate actual prejudice, or that there is a high enough probability of bias among community members for the judge to be able to presume prejudice, to the point that it would be unlikely to find a fair jury. The trial judge will ultimately determine if pretrial exposure warrants a change of venue, but regrettably, many courts do not consider social media to be a medium that is comparable to traditional media like newspapers, radio, and television when making decisions about change of venue requests (Garfield Tenzer, 2019).

Some researchers posit that the changing social media landscape calls for a modernized jury. Rather than trying to prevent and punish juror social media use, it may be more beneficial to adjust the role of the jury to that of a more active juror approach. This would entail jurors being permitted to take notes during the trial, have lists of witnesses and exhibits, ask clarifying questions, engage in preverdict deliberations with other jurors, and perhaps question witnesses. These considerations would assist juries in comprehending and evaluating the information they are given more effectively and discourage them from searching for answers online. Further, jurors' propensity to post remarks on social media may be decreased if they are given the opportunity to discuss the case with one another (Hoffmeister & Watts, 2018; Zora, 2012). On the contrary, some propose this period of digital communication means the decline of jury trials and the surge of judge alone proceedings, though this appears to be a drastic leap in response to social media misconduct by jurors (Braun, 2013).

When handling instances of juror misconduct, the most important factor to the court is the ability to detect violations. Early detection of misconduct will minimize the potential waste of court resources that could occur if the infraction is not found until further into the legal proceedings. Throughout the trial, juries must be actively questioned by the court regarding their online behavior in order to help identify violators as soon as the prohibited activity has taken

place (Zora, 2012). Because jurors deliberate in private, it is challenging to know exactly what takes place in the jury room (Hoffmeister & Watts, 2018). In fact, 45% of surveyed judges indicated they have no way of knowing if any wrongdoing took place during the trials they have conducted (Braun, 2013). Thus, the court must depend on jurors to report infractions. Judges that emphasize to jurors that they must report violations during the trial will instill in them a sense of power and duty incentivizing them to report misconduct, even though jurors may be reluctant to report such conduct by themselves or others for fear of the penalties (Hoffmeister & Watts, 2018; Zora, 2012). It would also be beneficial for a member of the court or each party to conduct daily searches throughout the trial to identify if any improper communications come from the jury, as well as monitor the jury's internet usage. If jurors are aware their online behavior will be observed, they are more likely to abide to court instructions throughout the trial (Flake, 2013; Hoffmeister, 2015).

Should juror misconduct be detected, the court must determine what responses are appropriate. A judge may opt to dismiss an individual juror or the entire jury panel, though this may impact the efficiency of the trial process (Bartels & Lee, 2013). Most commonly, a judge may punish a juror by holding them in contempt of court, though the penalization for this infraction varies broadly by jurisdiction (Hoffmeister, 2015). Other punishments include fining and sentencing, and there has been a growing push to codify criminal legislation that specifically targets juror misconduct connected to the Internet. California was the first state to pass legislation permitting juries to be punished for discussing confidential legal proceedings online. More defined legislation would establish maximum jail terms, define fine amounts, and give greater uniformity and clarity regarding what constitutes misconduct on the part of jurors. However, there are concerns that this could have a chilling effect, making jurors more reluctant

to report the offenses of their fellow jurors in fear of them facing criminal charges (Hoffmeister, 2015).

Additional Impacts of Social Media Usage on the Courts

Jurors are not the only persons involved in the criminal justice system who are active on social media. In a national survey conducted in 2010, 40% of judges and 56% of attorneys reported that they use social media sites (Janoski-Haehlen, 2011). In 2013, the percentage of the judiciary using social media increased to 86% (Thornburg, 2017). There are a variety of ways that judges use social media, many of which replicate the general population's motivations for a media presence. They may share news and information online regarding their personal and professional lives, as well as become a part of online communities in their areas of interest. Judges are encouraged by judicial ethics codes to use their unique experience to educate their communities on both the law and roles of the court. Using social media, they may be able to educate the public about the workings of the courts and the ongoing activities of their courts, as well as draw attention to courthouse events and opportunities for continuing education for members of the legal profession. Judges may also use social media as a campaign tool. Their active presence on media platforms enhances the perception of judges and courts as more accessible, and judges who take the time to humanize themselves on the Internet may challenge the public's idea that courts are overly formal and distant (Thornburg, 2017). But there are several limitations on judicial speech, including what is shared on social media. There are restrictions on judges' ability to comment on pending or impending cases, bans on *ex parte* communications, and warnings to avoid speech that could be interpreted as discrediting to their impartiality, integrity or independence. These limitations in relation to social media, though, are made at the discretion of each judge, and violations of these standards may result in public

disdain or professional penalization. As such, judicial ethics guidelines defining the parameters for using social networking sites are necessary to avoid judges having to choose their own boundaries for how they engage on social media (Janoski-Haehlen, 2011).

Judges also face increased scrutiny and criticism as a result of growing digital communications. In some instances, a judge may express anger and animosity towards defendants who appear before them in court. While in the past these displays of emotion would not have been cause for uproar, social media and the press have played a large role in amplifying the stigmatization of judges. Judge conduct that deviates from their duty to act politely and civilly when sitting on the bench has offended the public progressively more. Judges justify their actions by citing judicial independence, which gives them the freedom to conduct themselves in any way that leads to effective results, but nonetheless the public still uses the Internet to publicly humiliate irate judges for actions they deem improper (Goodman, 2013). Alarming, some online remarks extend beyond critiques to pose security risks to judges. Studies have shown that between 2015 and 2021, there was a 460% rise in reported threats and inappropriate communications directed towards federal judges, prosecutors, and court officials (Dixon & Anderson, 2023). The recent rise in threats to judges fueled by the reach and influence of the Internet and social media has resulted in demands for resignation, death threats, and even attempts and instances of judges being killed by discontented individuals (Goodman, 2013). Concerns for judges' safety are well-founded, given the rise in violent political attitudes and the ease with which personal information about them can be accessed online. Indeed, 19% of judges reported that they had altered their judicial conduct as a result of worries about personal security (Dixon & Anderson, 2023). Because of this, efforts must be made to improve judge security and protect them from threats that arise from extensive media dissatisfaction.

In addition to judges, attorneys are subject to substantial criticism online. Online reviews allow clients to openly evaluate attorneys based on a variety of criteria, including cost, efficacy, personality, competence, satisfaction, and communication (Goodrum, 2015). The general public has an interest in finding out information about attorneys they may want to hire, but it can be challenging for them to do so without a word-of-mouth recommendation. Online reviews provide customers with more information and give them a greater sense of control over their decisions regarding legal representation. However, negative reviews may be damaging for an attorney. Lawyers' reputations are significant not just for each individual lawyer but also for the legal profession as a whole. The legal profession has a stake in maintaining its overall reputation since it is crucial to the profession's legitimacy and ability to operate as a self-regulatory body. Insults to the profession's reputation have the potential to damage it, and if they are untrue, they may mislead the public (Rigertas, 2014). While unfavorable online reviews could discourage prospective customers from considering an attorney further, lawyers are restricted in their freedom to defend their honor. Attorneys are not permitted to divulge private client information and they must be careful not to violate other ethical standards that could result in disciplinary action (Goodrum, 2015). There exist general approaches that attorneys can take in response which avoid issues like client privacy, but responding to specific criticisms must be handled in a delicate manner. They are restricted from responding in a way that discloses client confidences, unless it is subject to the ABA Model Rule 1.6(b)(5), which allows a lawyer to reveal confidential information to present a claim or defense on the attorney's behalf in a dispute involving the attorney and the client, to construct a defense against a criminal charge or civil claim against the attorney based on their conduct, or to address accusations in any case involving the attorney's representation. However, the divulgence of private information must be limited to

what the lawyer believes to be reasonably necessary – a subjective opinion that could be dangerous if an attorney unintentionally shares too much information (Rigertas, 2014). The limited ways in which lawyers can respond to social media backlash means that negative online reviews can cause serious issues for their reputations and job security.

Not only can social media use by court figures be dangerous for those individuals, but it can impact the public perception of the criminal justice system as well. The public's impression of the judicial system's integrity is affected by the unrestrained use of social media by judges, attorneys, and jurors when the public is under the perception that these individuals are not upholding the required standards of professionalism. Lawyers may use social media to market their services and prepare for cases, and social media has become the primary form of communication between the criminal justice system and the general public. However, controversy regarding the "friendships" of judges and attorneys on social media, the use of social media to garner public support, inappropriate comments about judges or clients posted by attorneys on the Internet, and even generally offensive or inflammatory remarks made by members of the court reduce the public's faith in the justice system (Booth-Perry, 2014). Because of this, all participants in the justice system must be extremely wary about the information they choose to share on social media.

Conclusion

The evolution of media and online communication has complicated the efforts of the criminal justice system to ensure a defendant receives a fair trial. Increased access to information, the ease of inappropriate communication, and the temptation to share our lives on the Internet are all consequences of the digital age that have the potential to undermine the rights of the accused outlined in the Sixth Amendment. Failure to adhere to the fair administration of

justice can diminish the public's confidence in the integrity and legitimacy of its legal system. As such, understanding the effects of social media on criminal proceedings is crucial for developing appropriate practices for upholding the principles of fairness, justice, and the rule of the law. This research sought to recognize the implications of social media use on jurors, trial outcomes, and members of the courtroom in an effort to enhance knowledge about these issues.

The prevalence of the Internet and social media has increased the likelihood that impartial jurors will be difficult to find, that impaneled jurors will be enticed to look for and consider prejudicial information, and that unauthorized juror communications with other jurors and nonjurors will jeopardize the institution's integrity (Hoffmeister & Watts, 2018). It has been established that information regarding a criminal case presented online can create a bias against the accused. "Citizen journalists" frequently post one-sided, sensationalized content that will drive their engagement numbers. Unaware of limitations on freedom of speech regarding criminal proceedings, content creators may publish information that is not only inaccurate, but inadmissible at trial (Keyzer et al., 2013). Studies indicate that media coverage of criminal cases is overwhelmingly skewed against the accused (Bakhshay & Haney, 2018), and algorithmic filtering and personalization can exacerbate the negative perceptions about a defendant presented to the social media user (Hatem, 2023). When potential jurors intake this information, either by explicitly searching for it or stumbling upon it by chance, their ability to serve as impartial party is inhibited. They may develop preconceived notions about the case prior to receiving all of the evidence, and they may base their verdict decision on prejudicial information that the court and attorneys are unable to address (Flake, 2013). Additionally, by communicating about a case online, jurors may open the door to receiving outsiders' opinions who may influence their

decision, as well as prematurely deliberate with other jurors (Flake, 2013; Hoffmeister & Watts, 2018).

There are several efforts that may be made by the courts to mitigate the effects of juror use of social media on trial outcomes. By limiting the coverage of active cases during the pretrial and trial hearings, court officials can prevent extensive negative publicity that may taint the potential jury pool (Stern, 2022). The voir dire process should be improved to better filter jurors who may hold biases against the accused individual (Hatem, 2023; Hoffmeister & Watts, 2018). The modernization of jury instructions can improve participants' likelihood of abiding to the rules set forth by the court by properly informing them of the importance of avoiding internet misconduct and explicitly defining what actions are impermissible (Aaronson & Patterson, 2012). Further safeguards available to the court include requiring jurors to take an oath committing to jury instructions, jury sequestration and e-sequestration, and change of venue (Bartels & Lee, 2013; Braun, 2013; Steblay et al., 1999). The legal system may also consider adjusting the role of the jury to a more active approach, allowing them to participate in the trial in a way that will prevent them from seeking extrajudicial information on the Internet (Hoffmeister & Watts, 2018). In any case, the early detection of juror misconduct is the best way to avoid wasting extensive court time and resources in retrying or overturning cases, and by emphasizing that the jury's internet activity will be monitored they may be deterred from committing misconduct to begin with (Hoffmeister, 2015; Zora, 2012).

Not only are jurors impacted by social media discourse, but judges and attorneys are as well. While judges may be encouraged to bridge the gap between the justice system and the public by using the media to inform the public about the ongoings of the court, their personal use of social media has produced controversy about what is considered inappropriate

communications (Thornburg, 2017). They also face increased criticism on social media for behavior in court that does not align with the public's perception of judicial expectations about professionalism (Goodman, 2013). Similarly, attorneys are subject to negative online reviews that may damage both their reputation and the legal system's reputation (Goodrum, 2015). Due to increased access to their personal information online, disgruntled citizens may even pose a safety risk to these court officials (Dixon & Anderson, 2023).

In a Gallup Poll conducted in 2015, only 53% of respondents reported having a "great deal" or "fair amount" of trust in the legal system, indicating that American trust in the federal judicial system had reached a historical low (Thornburg, 2017). As mistrials continue to be declared, criminal convictions overturned, and retrials granted as a result of juror misconduct, public perception about the integrity of the criminal justice system will continue to decline. Inappropriate internet communications by court officials and online criticism that they are legally unable to refute will amplify these negative views towards the legal system. Accordingly, it is pertinent that the criminal justice system establishes appropriate standards and protocols for all trial participants to maintain the legitimacy of the institution. As the digital stratosphere continues to evolve, and new issues are presented to the court, legal procedures must change to appropriately handle these matters and ensure the proper execution of justice.

References

- Aaronson, D. E., & Patterson, S. M. (2012). Modernizing jury instructions in the age of social media. *Crim. Just.*, 27, 26. https://digitalcommons.wcl.american.edu/facsch_lawrev/230/
- Bakhshay, S., & Haney, C. (2018). The media's impact on the right to a fair trial: A content analysis of pretrial publicity in capital cases. *Psychology, Public Policy, and Law*, 24(3), 326-340. <https://doi.org/10.1037/law0000174>
- Bartels, L., & Lee, J. (2013). Jurors using social media in our courts: Challenges and responses. *Journal of Judicial Administration*, 23, 35-57. <https://ssrn.com/abstract=2291302>
- Booth-Perry, N. A. (2014). Friends of justice: Does social media impact the public perception of the justice system? *Pace Law Review*, 72, 35(1). <https://doi.org/10.58948/2331-3528.1876>
- Bozdag, E. (2013). Bias in algorithmic filtering and personalization. *Ethics and information technology*, 15, 209-227. <https://doi.org/10.1007/s10676-013-9321-6>
- Braun, K. (2017). Yesterday is history, tomorrow is a mystery – The fate of the Australian jury system in the age of social media dependency. *University of New South Wales Law Journal*, 40(4), 1634-1662. <https://doi.org/10.53637/yik15634>
- Chancellor, L. (2019). Public contempt and compassion: Media biases and their effect on juror impartiality and wrongful convictions. *Man. LJ*, 42, 427.
- Chandler v. Florida*, 499 U.S. 650 (1981).
- Datareportal (2024). *Global Social Media Statistics*. <https://datareportal.com/social-media-users>
- Dixon Jr, J. H. B., & Anderson, J. L. (2023). The evolving nature of security threats to judges.

- Judges' Journal*, 62(3), 8-12. <https://ezproxy.indstate.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=165105235&site=ehost-live&scope=site>
- Flake, A. B. (2013). Juror use of social media: Closing the evidentiary back door. *Trial Evidence*, 22(1), 18-22. <https://ezproxy.indstate.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=92619848&site=ehost-live&scope=site>
- Garfield Tenzer, L. Y. (2019). Social media, venue, and the right to a fair trial. *Baylor Law Review*, 71, 421. <https://digitalcommons.pace.edu/lawfaculty/1135/>
- Goodman, M. D. (2013). Shame, angry judges, and the social media effect. *Cath. UL Rev.*, 63, 589.
- Goodrum, A. (2015). How to maneuver in the world of negative online reviews, the important ethical considerations for attorneys, and changes needed to protect the legal profession. *Information & Communications Technology Law*, 24(2), 164-182. <https://doi.org/10.1080/13600834.2015.1042568>
- Hatem, Z. (2023). Double tap on a modernized process of voir dire: Have we lost the impartial juror in the era of social media algorithms? *University of Toledo Law Review*, 54(3), 421-442. <https://ezproxy.indstate.edu/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=164023954&site=ehost-live&scope=site>
- Hoffmeister, T. (2015). Preventing juror misconduct in a digital world. *Chi.-Kent L. Rev.* 981, 90(3). <https://scholarship.kentlaw.iit.edu/cklawreview/vol90/iss3/9>
- Hoffmeister, T., & Watts, A. C. (2018). Social media, the Internet, and trial by jury. *Annual Review of Law and Social Science*, 14(1), 259-270. <https://doi.org/10.1146/annurev-lawsocsci-101317-031221>

- Hutchinson, A. (2021). New research shows that 71% of Americans now get news content via social platforms. *Soc. Media Today*. <http://socialmediatoday.com/news/new-research-shows-that-71-of-americans-now-get-news-content-via-social-p1/593255>
- Janoski-Haehlen, E. M. (2011). The courts are all a Twitter: The implications of social media use in the courts. *Val. UL Rev.*, 46, 43. <https://scholar.valpo.edu/vulr/vol46/iss1/2>
- Keyzer, P., Johnston, J., Pearson, M., Rodrick, S., & Wallace, A. (2013). The courts and social media: What do judges and court workers think? *Judicial Officers Bulletin*, 25(6), 47-51.
- Ligon, N. J. (2023). Open trials in the social media age. *Virginia Journal of Social Policy & the Law*, 30, 287. https://vasocialpolicy.org/wp-content/uploads/2023/12/Ligon_LE_Final.pdf
- Ngak, C. (2011). Then and now: A history of social networking sites. *CBS News*. <https://www.cbsnews.com/pictures/then-and-now-a-history-of-social-networking-sites/#:~:text=May%201997%3A%20Six%20Degrees&text=Six%20Degrees%20is%20widely%20considered,school%20affiliations%20in%20one%20service>.
- Rigertas, L. A. (2014). How do you rate your lawyer – lawyer's responses to online reviews of their services. *Mary's J. on Legal Malpractice & Ethics*, 4, 242.
- Stebly, N. M., Besirevic, J., Fulero, S. M., & Jimenez-Lorente, B. (1999). The effects of pretrial publicity on juror verdicts: A meta-analytic review. *Law Hum Behav* 23, 219-235. <https://doi.org/10.1023/A:1022325019080>
- Stern, B. (2022). Social media's influence on the outcome of trials: *State v. Casey Anthony & Depp v. Heard* – How Florida can prevent a breakdown in the adversarial process. *Nova Law Review*, 47, 111. <https://advance-lexis-com.ezproxy.indstate.edu/api/document?collection=analytical-materials&id=urn:contentItem:686R-CHH1-JC8V-444D-00000-00&context=1516831>.

Thornburg, E. G. (2017). Twitter and the #so-called judge. *SMU Dedman School of Law Legal Studies Research Paper* (365). <https://dx.doi.org/10.2139/ssrn.3013241>

U.S. Const. amend. VI. (1791).

Zora, M. (2012). The real social network: How jurors' use of social media and smart phones affects a defendant's Sixth Amendment rights. *University of Illinois Law Review*, 577. <https://illinoislawreview.org/wp-content/ilr-content/articles/2012/2/Zora.pdf>